



ITALY 2023, *RIFORMA CARTABIA* INNOVATIONS IN THE CIVIL PROCESS AND ADR; POTENTIAL INTERAC- TIONS?¹

ITÁLIA 2023, REFORMA CARTABIA *INOVAÇÕES NO PROCESSO CIVIL E ADR; POSSÍVEIS INTERAÇÕES?*

Giovanni Matteucci²

Abstract: Civil cases pending in Italian civil courts at the end of 2019 no. 5,826,440. Delegated Law 69/2009 and Legislative Decree 28/2010 ruled mandatory civil commercial mediation in the contemporary Italian legal system. Strong opposition from lawyers and benign neglect from the judiciary. Main objection: “Mediation does not belong to the Italian legal culture”: History teaches the opposite! 2012, the intervention of the Constitutional Court, excess of delegation; back to voluntary mediation. Law decree 69/2013, called “*Del fare*”, ruled the OPT-OUT mandatory mediation procedure, the compulsory lawyer’s assistance and declared lawyers mediators “*ope legis*”! 2017, Alpa Commission (“*A world of experience has opened up, that ... until now had not been perceived in all its extent and complexity*”); the final report remained in a drawer. Delegated Law 206/2011, Luiso Commission (“*The process will be civil*”), Legislative Decree 149/2022, *Riforma Cartabia*: major innovations in the code of civil procedure and ADR. The new cognitive process under ordinary procedure is based on the anticipation of the first hearing: documents by the parties already laid out, so that the judge, after the free and non-formal questioning of the parties, can proceed to assess the admissibility and relevance of the means of proof and set the trial-calendar. June 30, 2023, mediation 4.0 takes off: increase of compulsory subjects; enhancement of the court-mandated mediation, involvement of the public administration, regulation of the report of the technical consultant in mediation, ODR, opposition to injunctions, tax incentives and fines to achieve the effectiveness of the procedure. As of October 10, 2023, the standards for fees of procedures and quality of training are still pending. Will the requirements for the parties' lawyers to prepare all the necessary documentation immediately before the first hearing (and the associated expensive fees for their clients) induce the parties to consider going to mediation more in order to avoid litigation (and its costs)?

Keywords: mediation 4.0; riforma Cartabia; ADR; litigation; Italy.

Resumo: Os casos civis pendentes nos tribunais civis italianos no final de 2019 eram de 5.826.440. A Lei Delegada 69/2009 e o Decreto Legislativo 28/2010 regulamentaram a mediação comercial civil obrigatória no sistema jurídico italiano contemporâneo. Forte oposição dos advogados e negligência benigna do judiciário. Principal objeção: "A mediação não pertence à cultura jurídica italiana": A história ensina o contrário! 2012, a intervenção do Tribunal Constitucional, excesso de delegação; de volta à mediação voluntária. O Decreto-lei 69/2013, chamado "Del fare", regulamentou o procedimento de mediação obrigatória OPT-OUT, a assistência obrigatória de advogados e declarou os advogados mediadores "ope legis"! 2017, Comissão Alpa ("Abriu-se um mundo de experiências que... até agora não havia sido percebido em toda a sua extensão e complexidade"); o relatório final permaneceu em uma

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Tanks to Mario Stoppa, lawyer, for his advices on innovations to the code of civil procedure in Italy. Needless to say, the responsibility for what is written in the article lies entirely on the author.



gaveta. Lei Delegada 206/2011, Comissão Luiso ("O processo será civil"), Decreto Legislativo 149/2022, Riforma Cartabia: grandes inovações no código de processo civil e ADR. O novo processo cognitivo no procedimento ordinário baseia-se na antecipação da primeira audiência: documentos das partes já expostos, para que o juiz, após o interrogatório livre e não formal das partes, possa avaliar a admissibilidade e a relevância dos meios de prova e estabelecer o calendário do julgamento. Em 30 de junho de 2023, a mediação 4.0 entra em ação: aumento das disciplinas obrigatórias; aprimoramento da mediação judicial, envolvimento da administração pública, regulamentação do relatório do consultor técnico em mediação, ODR, oposição a liminares, incentivos fiscais e multas para alcançar a eficácia do procedimento. Em 10 de outubro de 2023, os padrões para honorários de procedimentos e qualidade de treinamento ainda estão pendentes. Será que as exigências para que os advogados das partes preparem toda a documentação necessária imediatamente antes da primeira audiência (e os caros honorários associados para seus clientes) induzirão as partes a considerar mais a mediação a fim de evitar o litígio (e seus custos)?

Palavras-chave: mediação 4.0; reforma Cartabia; ADR; litígio, Itália.

1. INTRODUCTION

Too long civil trials and pending civil cases in the Italian courts kept growing, reaching a maximum of 5,826,440 as of 31.12.2009. L. 69/2009 (Law No. 69 of 18.06.2009), Art. 60³ conf mandated the government to review the regulations on mediation and conciliation in civil and commercial disputes.

One year later, D. Lgs.28/2010 (Legislative Decree No 28 of 04.03.2010)⁴, effective from March 2011, introduced compulsory civil and commercial mediation into the contemporary Italian legal system, regulated by D.M. 180/2010 (Ministerial Decree No 180 of 18.10.2010)⁵.

Strong opposition from lawyers, benign neglect by the judiciary.

Eleven years later, in 2022:

- 2,482,755 new proceeding started in Italian civil courts;

³ Legge 18.6.2009, n.69, Disposizioni per lo sviluppo economico, la semplificazione, la competitività nonché in materia di processo civile, art. 60 (*Delega al Governo in materia di mediazione e di conciliazione delle controversie civili e commerciali*), G.U. n.140 del 19.06.2009, Supplemento ordinario n. 95

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2009-06-19&atto.codiceRedazionale=009G0069&elenco30giorni=false

⁴ Decreto Legislativo 4 marzo 2010, n. 28 - Attuazione dell'articolo 60 della legge 18 giugno 2009, n. 69, in materia di mediazione finalizzata alla conciliazione delle controversie civili e commerciali. (10G0050). Entrata in vigore del provvedimento: 20.03.2010 (effective from 20.03.2011) G.U. n. 53 del 05.03.2010. Available at: <https://www.gazzettaufficiale.it/eli/gu/2010/03/05/53/sg/pdf>.

⁵ D.M. 18.10.2010, n.180 Regolamento recante la determinazione dei criteri e delle modalità di iscrizione e tenuta del registro degli organismi di mediazione e dell'elenco dei formatori per la mediazione, nonché l'approvazione delle indennità spettanti agli organismi, ai sensi dell'articolo 16 del decreto legislativo 4 marzo 2010, n. 28. (10G0203). Entry in force 05.11.2010. Available at: <https://www.gazzettaufficiale.it/eli/gu/2010/11/04/258/sg/pdf>.



- 155,122 new civil and commercial mediations;
- 23,268 conciliation agreements.

In the 2011/2022 period:

- decrease (-5% per year) in proceedings started in the civil courts, because of the economic crisis and the Covid-19 pandemia;
- strong increase (+14% per year) of civil and commercial mediation procedures;
- strong increase (+12% per year) of conciliation agreements.

And, according to the European Union, Italy practices mediation at six times higher of the rest of Europe⁶.

But in 2022:

- the success rate (agreements / mediation proceedings started) was 15%;
- the agreements / new proceedings started in courts 0.9.

Too little.

Nevertheless. In the mediation procedures where ALL parties were present and decided to carry on beyond the first meeting, the success rate was 47%.

Why is it so difficult to bring parties to the mediation proceeding in Italy? Because of the lack of university training and because Italians do not like innovations⁷.

In 2022 the Constitutional Court underlined excessive delegated powers in the D. Lgs. 28/2010⁸; back to voluntary mediation.

Law decree 69/2013, called “*Del fare*”⁹, ruled the OPT-OUT mandatory mediation procedure, the compulsory lawyers assistance and lawyers mediators “*ope legis*” (and, for

⁶ EU Parliament, Resolution P8_TA (2017)032, *Implementation of the Mediation Directive*, 12.09.2017 (2018/C 337/01) A. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017IP0321&rid=4>.

⁷ MATTEUCCI, Giovanni. Italy, the mediation paradox? *The mediation*, IKOME, Steinbeis, Leipzig (Germany), 12.04.2023. Available at: <https://lnkd.in/dAzk5a3d>.

⁸ CORTE COSTITUZIONALE, sentenza 6 dicembre 2012 n. 272, *Gazz. Uff.* 12.12.2012. Available at: <https://www.altalex.com/documents/news/2012/12/17/mediazione-obbligatoria-incostituzionale-il-testo-integrale-della-sentenza>.

⁹ D.L. 21 giugno 2013, n. 69 - Disposizioni urgenti per il rilancio dell'economia. (13G00116)

Art.84 - Modifiche al decreto legislativo 4 marzo 2010, n. 28

G.U. Serie generale n.144 del 21.06.2013, S.O. n.50.
<https://www.gazzettaufficiale.it/eli/gu/2013/06/21/144/so/50/sg/pdf>

LEGGE 9 agosto 2013, n. 98. Conversione in legge, con modificazioni, del decreto-legge 21.06.2013, n. 69, recante disposizioni urgenti per il rilancio dell'economia. (13G00140)



lawyers, 15 hour introductory mediation training established by the CNF Consiglio Nazionale Forense)!

2017, Alpa Commission (“*A world of experience has opened up, that ... until now had not been perceived in all its extent and complexity*”)¹⁰; the final report remained in a drawer. Delegated Law 206/2011, Luiso Commission (“*The process will be civil*”)¹¹, Legislative Decree 149/2022, *Riforma Cartabia*: major innovations in the code of civil procedure and ADR.

2. RIFORMA CARTABIA, INNOVATIONS IN THE CIVIL PROCESS AND ADR

The Covid-19 pandemia spread to all European states, with highly negative consequences. To aid recovery from this situation, the European Union (finally united) launched an aid programme, called the 'Next Generation (NGEU) programme', under which substantial funding was granted under the name NRRP (National Recovery and Resilience Plan) 2020.¹² The granting of the latter was conditional on the realisation of important structural projects, including - for Italy - efficiency improvements in justice: “*to reduce the average length of civil proceedings by more than 40 per cent*” (page 99) and the ‘*backlog of cases in the ordinary*

G.U. n.194 del 20.08.20213, S.O. n. 63. Available at: <https://www.gazzettaufficiale.it/eli/id/2013/06/21/13G00116/sg>.

¹⁰ MINISTERO DELLA GIUSTIZIA. Commissione Alpa – *Commissione di studio per l’elaborazione di ipotesi di organica disciplina e riforma degli strumenti di degiurisdizionalizzazione, con particolare riguardo alla mediazione, alla negoziazione assistita e all’arbitrato* (07.03.2016) - Scheda di sintesi - aggiornamento: 4 giugno 2018. Available at:

https://www.giustizia.it/giustizia/it/mg_1_36_0.page?contentId=COS119700&previousPage=mg_1_36.

MATTEUCCI, Giovanni. Commissione Alpa e mediazione: ‘festina lente’ o ‘adelante con juicio’?, *Blogmediazione*, CCIAA di Milano, 7.2.2017. Available at: <https://blogmediazione.com/2017/02/07/commissione-alpa-e-mediazione-festina-lente-o-adelante-con-juicio/>.

¹¹ MINISTERO DELLA GIUSTIZIA, *Commissione Luiso - Commissione per l’elaborazione di proposte di interventi in materia di processo civile e di strumento alternativi - Scheda di sintesi*, 03.06.2021. Available at: https://www.giustizia.it/giustizia/it/mg_1_36_0.page?contentId=COS334499&previousPage=mg_1_36.

MATTEUCCI Giovanni. ADR and civil proceeding in Italy 2021, potential developments. Commissione Luiso. *Revista Electronica de Direito Processual REDP*; UERJ Universidade do Estado do Rio de Janeiro, v. 22, n. 3, 2021. Available at: <https://www.e-publicacoes.uerj.br/index.php/redp/issue/view/2593>.

MINISTERO DELLA GIUSTIZIA, Commissione Luiso, relazione finale, 24.05.2022. Available at: https://www.giustizia.it/cmsresources/cms/documents/commissione_LUIO_relazione_finale_24mag21.pdf

¹² Available at: <https://italiadomani.gov.it/en/home.html>.



*courts of first instance', reducing by 65 per cent the number of pending cases compared to 2019 (by mid-2024)".*¹³

L. 206/2021 e D.Lgs. 149/2022, Riforma Cartabia: major innovations in the Code of Civil Procedure and ADR. Implementing decrees: D.M. 01.08.2023 (23A04556) legal financial aid (*gratuito patrocinio*) and D.M.01.08.2023 (23A04557) tax incentives. The Ministerial Decree, reforming the D.M. 180/2010, amending mediation procedure tariffs, compensation for mediators and training requirements, all crucial points, was expected to be published by the end of August 2023; on 10.10.2023, however, the decision of the Consiglio di Stato was published, inviting the competent administrations to deepen some topics regulated therein.¹⁴

The Riforma Cartabia has, *inter alia*, strongly affected the first-instance proceedings before the court, concentrating the activities of the preparatory and introductory phase, which, moreover, have to be carried out over a period of few months, and also suppressing hearings that may be deemed unnecessary.¹⁵

¹³ MARINARO, Marco. Il Paese dove tutto finisce in tribunale. Riflessioni sulle prospettive di riforma della giustizia civile. *Judicium*, 12.12.2018. Available at: <https://www.judicium.it/paese-finisce-tribunale-riflessioni-sparse-sulle-prospettive-riforma-della-giustizia-civile/>.

¹⁴ Riforma Cartabia, rules :

Legge 26 novembre 2021, n. 206 - (GU Serie Generale n.292 del 09-12-2021). Available at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2021-12-09&atto.codiceRedazionale=21G00229&elenco30giorni=false.

Decreto Legislativo 10 ottobre 2022, n. 149 - (GU Serie Generale n.243 del 17-10-2022 - S.O. n. 38). Available at:

https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2022-10-17&atto.codiceRedazionale=22G00158&elenco30giorni=false.

D.M. 01.08.2023 (23A04556) – Gratuito patrocinio - (GU Serie Generale n.183 del 07-08-2023). Available at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-08-07&atto.codiceRedazionale=23A04556&elenco30giorni=false.

D.M. 01.08.2023 (23A04557) – Incentivi fiscali - (GU Serie Generale n.183 del 07-08-2023). Available at: https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-08-07&atto.codiceRedazionale=23A04557&elenco30giorni=false.

Consiglio di Stato, Sezione Consultiva per gli Atti Normativi, Adunanza di Sezione del 29/09/2023, Numero Affare 00930/2023, spedizione 14/09/2023. Available at: https://www.giustizia-amministrativa.it/portale/pages/istituzionale/visualizza?nodeRef=&schema=consul&nrg=202300930&nomeFile=202301200_26.html&subDir=Provvedimenti.

¹⁵ Among the new provisions, which are also linked to the computerisation of judicial procedures, a Decree of the Minister of Justice was issued on 07.08.2023, concerning the 'Criteria for the drafting of judicial documents', with the requirement of the conciseness of documents.



C.P.C. (Code of Civil Proceeding), Artt. 163, 163-bis and 167. The trial begins with a writ of summons to appear at a fixed-hearings, to be notified to the defendant, by one hundred and twenty days. The defendant can raise counterclaims or objections, or call third parties, filing a statement of defence at least 20 days before the first hearing. If not, the defendant can file its statement on the hearing date.

At the first hearing, if either party so requests, the judge must authorise both parties to simultaneously file three successive written pleadings within 30 days, 30 days and 20 days. In these statements the parties must better specify their claims and offer other evidence.

If the judge believes that no further evidence is necessary, he schedules a hearing, at which the parties must file their final conclusions, within 60 days and 20 days from the date of the hearing. Different rules may be applied.

Usually, the judge issues decisions within 30 or 60 days from the date of filing the second and final pleading ¹⁶.

Relevant innovations also on ADRs: mediation, arbitration and assisted negotiation. We focus on the first one.

Ministero della giustizia - Decreto 07 agosto 2023, n. 110

Regolamento per la definizione dei criteri di redazione, dei limiti e degli schemi informatici degli atti giudiziari con la strutturazione dei campi necessari per l'inserimento delle informazioni nei registri del processo, ai sensi dell'articolo 46 delle disposizioni per l'attuazione del codice di procedura civile. (23G00120)

(GU Serie Generale n.187 del 11-08-2023). Available at: [https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-08-](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-08-11&atto.codiceRedazionale=23G00120&elenco30giorni=true&fbclid=IwAR0yK5dLOWcptL7Rs87KfHROy7MG9CsvaM9_11G0gI6kmdJkpOSpCOz8VuY)

[11&atto.codiceRedazionale=23G00120&elenco30giorni=true&fbclid=IwAR0yK5dLOWcptL7Rs87KfHROy7MG9CsvaM9_11G0gI6kmdJkpOSpCOz8VuY](https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2023-08-11&atto.codiceRedazionale=23G00120&elenco30giorni=true&fbclid=IwAR0yK5dLOWcptL7Rs87KfHROy7MG9CsvaM9_11G0gI6kmdJkpOSpCOz8VuY).

¹⁶ The new rules provide for 120 clear days between service of the summons and the appearance hearing;

- the defendant enters an appearance at least 70 days before the hearing fixed in the summons;
- within 15 days of the expiry of the time limit for the defendant to enter an appearance, the judge will, if necessary, determine the questions that can be raised ex officio, cross-examination, admissibility, etc.

The parties may then propose supplementary pleadings:

2) at least 40 days before the hearing, to put forward the claims and objections that are the result of the counterclaim or of the defenses brought by the defendant, and to specify or amend the claims, objections and conclusions already put forward. In the same pleading the plaintiff may request to bring in a third party if the need arises from the defendant's arguments in the response;

3). At least twenty days before the hearing, to reply to the claims and objections that are new or modified by the other parties, to propose the objections that are the consequence of the new claims submitted by them in the pleading referred to in paragraph 1), and to indicate the means of proof and to produce documents;

4). at least 10 days before the hearing, reply to the new objections and indicate the evidence of the contrary.

At the first hearing, the judge tries the conciliation between the parties present in person.

He then orders the instruction of the case with the timetable for the subsequent hearings until the case is remitted for decision



On June 30, 2023 mediation 4.0 takes off in Italy:

- increase in the number of compulsory subjects,¹⁷,
- enhancement of the court-mandated mediation,
- involvement of the public administration,
- regulation of the use of the technical consultant's report in mediation,
- telematic mediation,
- opposition to injunctions,
- territorial competence of the mediation body exemption by the registration tax up to euro 100,00.00¹⁸, and other tax incentives¹⁹.
- fines to achieve the effectiveness of the procedure,

¹⁷ In Italy, mediation is mandatory for the following matters:

- from February 21, 2021, according to D.Lgs. 28/2010: condominium (condominio), property (diritti reali), partition (divisione), wills and inheritance (successioni ereditarie), family covenants and agreements (patti di famiglia), lease (locazione), loans (comodato), business rents (affitto di azienda), medical malpractice damages (risarcimento del danno da responsabilità medica e sanitaria), libel (risarcimento danni da diffamazione a mezzo della stampa o altro mezzo di pubblicità), insurance, banking and financial contracts (contratti assicurativi, bancari e finanziari);
- from June 30, 2023, according to Law 206/2021 and D.Lgs. 149/2022 (Riforma Cartabia): joint ventures (contratti di associazione in partecipazione), consortium (consorzio), franchising, service agreements (contratto di opera), network agreements (contratto di rete), supply agreements (di somministrazione), personal partnerships (società di persone), subcontracting (subfornitura).

Mediation is compulsory also when ordered by a judge for conflicts related to any disposable right.

¹⁸ In the mediation procedures dated before June 30, 2023, the agreements with a value not exceeding 50,000.00 Euro were exempted by the registration tax. The reform raised the exemption ceiling to 100,000.00 Euro. If the value is above the exemption, tax will be collected for the excess.

The tax will be calculated according to the rules of the “*Testo Unico dell’Imposta di Registro*” (131/1986).

The euro 100,000.00 exemption limit is to be understood with reference to the value of the agreement.

To the registration tax must be added the mortgage and cadastral tax which, to be paid in a fixed amount of 50.00 euro each.

No-agreement, the minutes are exempt from registration tax and any other taxes (art. 17, §2).

¹⁹ If an agreement is reached

- tax credit proportionate to the amount paid (procedure start-up expenses, documented expenditure and first meeting expenses), up to a maximum of euro 600;
- if mediation is a compulsory condition for proceeding or has been ordered by the judge, the parties are granted an additional tax credit, proportionate to the lawyer's fee, up to a maximum of euro 600.

The two tax credits described above may amount to a maximum of euro 600 per procedure and up to an annual maximum of euro 2,400 for natural persons and euro 24,000 for legal persons.

In the absence of an agreement, the tax credits are reduced by half.

If, as a result of the agreement, the related lawsuit is cancelled, the parties are granted an additional tax credit, proportionate to the unified contribution paid; maximum amount euro 518.



- legal aid ²⁰.

3. POTENTIAL INTERACTIONS BETWEEN THESE INNOVATIONS?

The Riforma Cartabia has strongly affected the first-instance proceedings before the court, concentrating the activities of the preparatory and introductory phase, which, moreover, have to be carried out over a period of few months.

Will this make the parties and their lawyers consider a greater use of voluntary mediation and a greater focus (physical presence of the parties) on compulsory mediation, thanks also to tax relieves?

Will the requirements for the parties' lawyers to prepare all the necessary documentation immediately before the first hearing (and the associated expensive fees for their clients) induce the parties to consider going to mediation more, in order to avoid litigation (and its costs)?

First, great number of (critical) comments on the new rules do not take this opportunity into consideration at all. It will therefore have to be seen in practice whether there will be any change in the habits of the parties and their legal advisors. And it is likely that the choice will be influenced, and not a little, by the effectiveness of the new tax benefits provided for mediation procedures from the very first meeting (but, in order to benefit from them, the procedures are not very simple).

As a result of the new legislation, there should also be more focus on judicial conciliation. At the appearance hearing, in fact, the parties are expected to appear in person, for the purpose of the conciliation attempt. The judge will hear the parties and not only the lawyers and, if he sees conciliatory possibilities, he himself may try to find a solution together with those present. Or he could send the parties to mediation.

²⁰ MATTEUCCI, Giovanni. Italy, The country where everything ends in court: New rules on mediation *Revista Eletrônica de Direito Processual REDP UERJ*, Universidade do Estado do Rio de Janeiro, 2023. Available at: <https://www.e-publicacoes.uerj.br/index.php/redp/article/view/76135/46024>.



As far as 'justified reasons' are concerned, based on the experience gained in mediation over the past ten years, it is hoped that the requirement to be present in person will not continue to be a nuisance.

According to Dr. Massimo Moriconi, a former judge, the possibilities are ambivalent.

"The judge will hear the parties and not only the lawyers, as is the case now (and as the mediator often still does, when the parties do not appear in person).

"If he sees conciliatory possibilities, he could leave it to others (the mediator) to work on it.

"It would be likely to start a conciliatory mentality for the judge, which is largely absent today and which could lead to a more open-minded approach to ADR procedures.

"ADR measures should be taken into account and be useful for the judge carrier.

"Provided that the orders by the judge, to send to mediation, are not merely anodyne, i.e. not motivated, and are not contradictory to each other ... "

Ma:

"If the judge did not not appreciate or practise mediation, he / she might feel stressed by the time-limiting legislation. That is, the judge might conduct the conciliation attempt in a purely formal manner and then consider other conciliatory opportunities, let alone mediation, useless.

"Given the tight schedule of procedural tasks at the first instance of the court, and in particular the significance of the trial calendar, and the atmosphere of disvalue against any act that delays the trial time, one also wonders where and when the judge can enter the conciliatory paths without incurring violations, which could even expose him to negative measures in terms of discipline and career.

"In theory, the judge should arrive at the first hearing much better informed and prepared, but this will depend on the efficiency of the chancelleries and the Trial office" ²¹.

4 CONCLUSIONS

²¹ MORICONI, Massimo, text of a speech at a conference "*La Riforma Cartabia – Novità in materia di mediazione ed arbitrato*" 15.12.2022.



The Riforma Cartabia, which came into force in the first half of 2023, introduced many and significant innovations in both the process and ADR, all of which had to be implemented in a very short timeframe. As a result, there has been, and still is, a great deal of discontent and criticism.

Among the new features, there are more training for mediators, better organization for mediation providers and, for the first time ever, training for judges on mediation. The basic problem will be the focus of the training: will it concentrate on the nature of mediation, on communication techniques and on the links with the process or, as it has been the case, mainly on the latter?

If it continues as in the past, lawyers participating in mediations will adapt adversarial techniques (with which they are familiar) to a procedure that must, instead, help the parties to find their own solution. In practice, the lawyerization of mediation²².

In order to avoid this, the training of judges in mediation, the quality of mediators and the dialogue between judges and mediators will be necessary. The latter, so far, very very very poor.

There is a lot of work to be done!

Grosseto (Tuscany – Italy), October 10, 2023

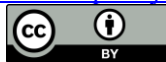
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Appendices

²² HALEY, Nolan; M., Jacqueline. Mediation: The 'New Arbitration'. *Harvard Negotiation Law Review*, Forthcoming, Fordham Law Legal Studies Research Paper No. 1713928, 2010. Available at SSRN. Available at: <https://ssrn.com/abstract=1713928>.

WEILER, Rick, *Whiter (Wither) Mediation*, Kluwermediationblog 06.04.2018 (Ontario). Available at: <http://mediationblog.kluwerarbitration.com/2018/04/06/whither-wither-mediation/>.

SALISBURY, Mary. The Lawyerization of the Mediation Process, *Mediate.com*, 03.10.2020. Available at: <https://mediate.com/the-lawyerization-of-the-mediation-process/>.



Italian civil proceedings pending at the end of the period

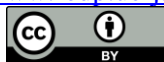
Years 2003 / 2022

Table 1

Year	Amount	Changes
2003	4.597.480	
2004	4.748.615	3,3%
2005	4.861.515	2,4%
2006	5.096.850	4,8%
2007	5.294.561	3,9%
2008	5.447.662	2,9%
2009	5.700.105	4,6%
2010	5.395.102	-5,4%
2011	5.403.887	0,2%
2012	5.100.597	-5,6%
2013	4.679.352	-8,3%
2014	4.353.122	-7,0%
2015	3.965.606	-8,9%
2016	3.731.775	-5,9%
2017	3.560.574	-4,6%
2018	3.426.650	-3,8%
2019	3.293.960	-3,9%
2020	3.258.014	-1,1%
2021	3.046.755	-6,5%
2022	2.858.363	-6,2%

Source: Italian Ministry of justice

https://www.giustizia.it/giustizia/it/mg_1_14_1.page?contentId=SST1287132&previousPage=mg_2_9_13



Italian civil proceedings pending at the end of the period

Chart 1

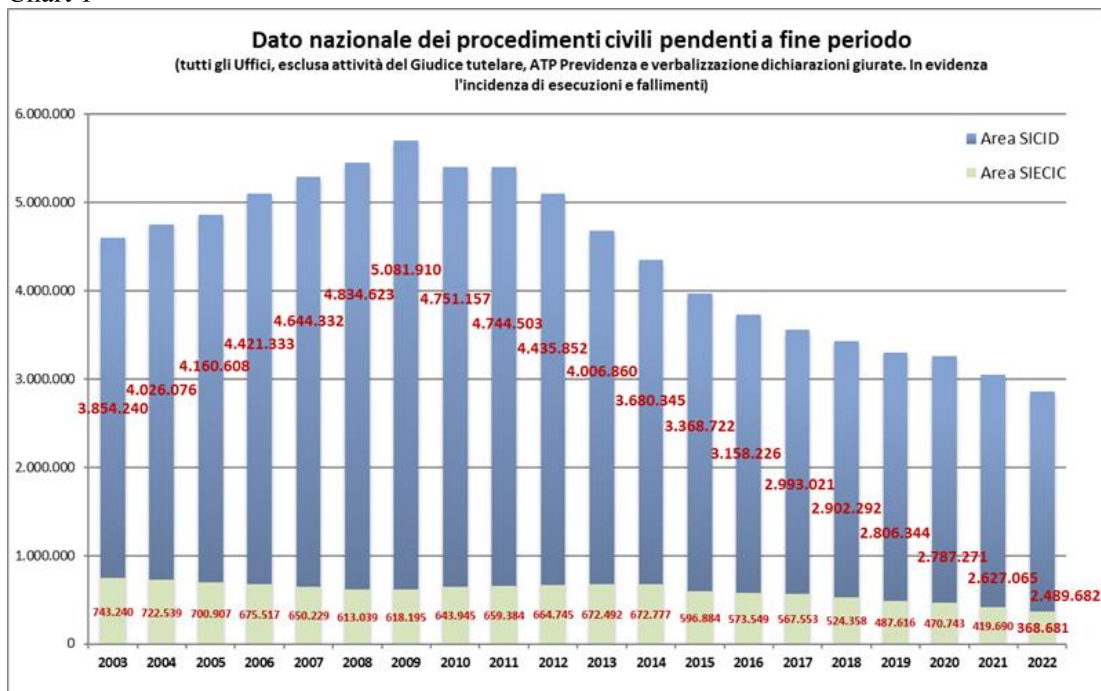


Chart 2

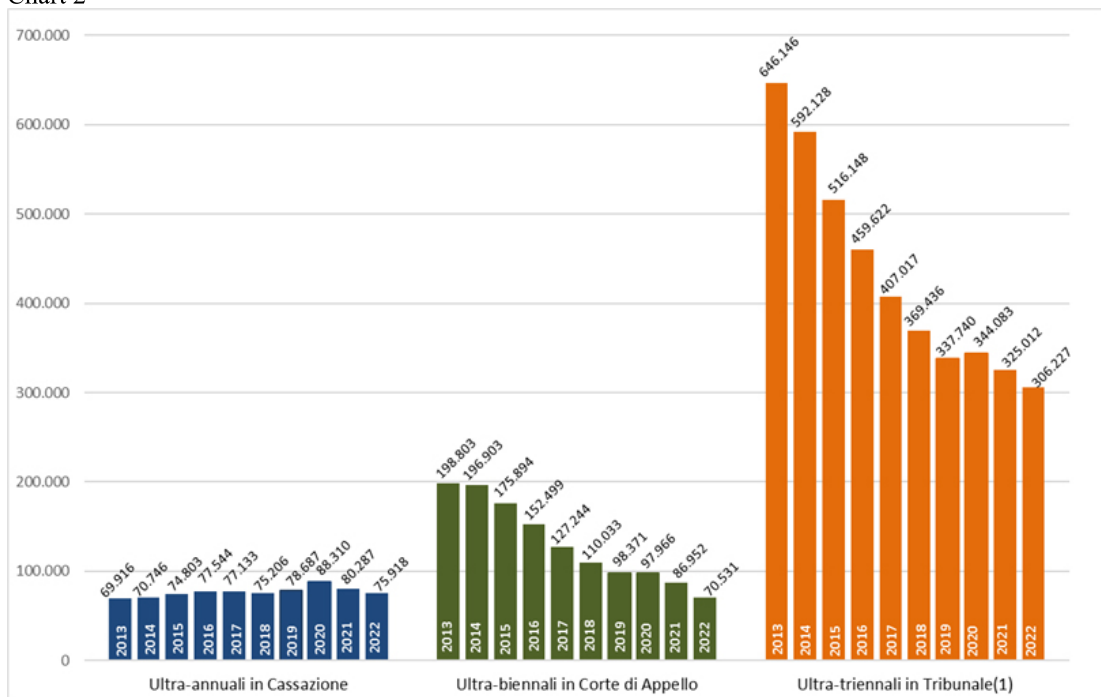






Table 2	CIVIL AND COMMERCIAL MEDIATION IN ITALY				
	Incoming mediation proceedings	The invited party present	Agreement The invited party present	Agreement	Agreement
				overall success rate	absolute values
			[1]	[2]	
	A	B	C	B x C = D	A x D = E
2011 °	60.810.	30.7%	53.2%	16.3%	9,912.
2012	154.879.	26.2%	41.4%	10.8%	15,647.
2013	41.604.	32.4%	42.4%	13.7%	5,700.
2014	179.587.	40.5%	24.2%	9.8%	17,599.
2015	196.247.	44.9%	22.6%	10.1%	19,821.
2016	183.977.	46.9%	23.7%	11.1%	20,421.
2017	166.989.	48.2%	25.4%	12.2%	20,373.
2018	151.923.	50.4%	27.3%	13.8%	20,965.
2019	147.691.	49.1%	28.7%	14.1%	20,824.
2020	125.754.	47.8%	28.7%	13.7%	17.253.
2021	166.511.	50.0%	27.3%	13.7%	22.812.
2022	155.122.	51.8%	28.9%	15.0%	23.268.
° 21.2 / 31.12.2011					
[1] In 2011, 2012 and untill 19.9.2013 first information meeting was not required. On 20.9.2013 the "OPT-OUT" procedure entered into force, with the possibility for the present parties to decide wheter or not to initiate the mediation proceeding. Data from 2014 shows the success rate when all parties are present and decide to continue beyond the first meeting.					
If all parties were present and decided to go beyond the first meeting, the success rate in 2022 was 47% in Italy.					
[2] Overall success rate, including mediations in which invited party is not present and those in which parties do NOT go further the first information meeting.					
In the comparison between years, it has to be taken into account that :					
. from 24.10 / 13.12.2012 to 19.9.2013 the compulsory attempt at mediation was suspended;					
. in 2012 there were approximately 45,000 mediations (an average of 11,165 per quarter) for damages from circulation of vehicles and boats; this subject has been no longer mandatory since 20.09.2013.					
Statistics in columns A, B and C, source Italian Ministry of Justice.					
https://webstat.giustizia.it/SitePages/StatisticheGiudiziarie/civile/Mediazione%20Civile.aspx					



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